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EMPP and ESA Information
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TO: Assessing Officers and County Equalization Directors

FROM: Michigan State Tax Commission

SUBJECT: Key Points for Assessors Administering the EMPP Exemptions for the 2016 Tax Year

Bulletin 21 of 2015 is rescinded.

The purpose of this Bulletin is to provide guidance regarding Public Acts 107-110 of 2016. These Public Acts amend the General Property Tax Act, Industrial Facilities Exemption Act, Essential Services Assessment Act and the Alternative Essential Services Assessment Act and address implementation issues associated with the Essential Services Assessment.

This Bulletin provides key points for assessors in administering the *qualified new personal property tax exemption* (MCL 211.9m) and the *qualified previously existing personal property tax exemption* (MCL 211.9n) for the 2016 tax year. This guidance is being provided to supplement the information contained in State Tax Commission Bulletins 7, 8 and 9 of 2015. Assessors should also review the ESA Topics promulgated by the Michigan Department of Treasury for further information and direction.

1. **Claiming the Exemption:** Beginning December 31, 2015 (for the 2016 assessment year), qualified new personal property and qualified previously existing personal property located on *Occupied Real Property* is exempt from ad valorem taxation and is instead subject to the State Essential Services Assessment (ESA). Additionally, certain P.A. 198 (IFT) Property and New Personal Property (P.A. 328) are subject to the State Essential Services Assessment. To claim this exemption, a fully completed Form 5278, *Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment*, must be received by the assessor of the local unit of government where the qualified personal property is located no later than February 22, 2016.

For the 2016 tax year only, taxpayers that did not timely file or filed an incomplete Form 5278 with their local unit of government by February 22, 2016 to claim the EMPP exemption can file Form 5278 with the assessor of the city or township where the personal property is located by May 31, 2016. Taxpayers should not complete Form 5278 unless the personal property meets the definition of Eligible Manufacturing Personal Property (EMPP).

Assessors must deny an exemption for personal property that is determined not to meet the eligibility requirements.

2. **Definitions to Determine Eligibility:** All Assessing Officers must understand the definitions outlined in Bulletin 7 of 2015. Of significance is the concept of *Occupied Real Property*, which can be a real property parcel, part of a real property parcel or several real property parcels. The main concept is that the property must be occupied as a single site by the taxpayer. Since the formula for determining qualification of the location for the EMPP exemption is different than the formula used to determine classification, it is possible for personal property classified as industrial to be disqualified as EMPP or for personal property classified as commercial to be qualified for the purposes of receiving the exemption.

Personal property is determined to be EMPP based on the predominant use of the personal property on the *Occupied Real Property*. If the predominant use of the personal property is for “*Industrial Processing*” and/or for “*Direct Integrated Support*,” then all the personal property on the *Occupied Real Property*, no matter who owns it, no matter what it is and no matter how it is used, is EMPP. The exception is personal property that is not owned, leased or used by the person who owns or leases the occupied real property, and is brought to the site without a current active business purpose, which does not qualify as EMPP. Personal property can be used for Direct Integrated Support even if the taxpayer is not manufacturing on the site and even if the taxpayer is not a manufacturer. P.A. 108 of 2016, clarifies that utility personal property as defined in MCL 211.34c(3)(e) and personal property used in the generation, transmission or distribution of electricity for sale are not EMPP.

3. **Form 5278:** The person claiming the exemption for the qualified new personal property and/or qualified previously existing personal property must properly file Form 5278, *Eligible Manufacturing Personal Property Affidavit and Statement for Personal Property and Essential Services Assessment*. Form 5278 contains the Affidavit to claim the EMPP exemption, the Personal Property Statement (Form 632) for EMPP that does not yet qualify for the exemption, (remains on ad valorem roll or IFT roll) and the required Essential Services Assessment filing (See Bulletin 9 of 2015). Since the STC adopted a single reporting form, if a taxpayer did not check *Yes* on the taxpayer’s 2015 Personal Property Statement indicating the property was EMPP and the taxpayer qualifies for the EMPP exemption, the taxpayer is only required to file Form 5278 for the 2016 year. A separate Form 5278 is required to be filed for each assessment parcel of personal property.

An assessor should not mail Form 5278 to taxpayers who he or she believes qualify for the EMPP exemption. Since the determination of whether personal property is EMPP is based on the use of the personal property, assessors have no means of reaching a conclusion as to whether the personal property is EMPP. If Form 5278 is sent to taxpayers who do not qualify, it mistakenly implies qualification and if the form is not sent to taxpayers who do qualify, it implies predetermination of an exemption claim. In either case, there may be negative financial ramifications to the taxpayer. Each taxpayer must independently determine whether it qualifies for exemption.

Taxpayers can obtain a copy of Form 5278 from the State Tax Commission website, www.michigan.gov/statetaxcommission, or www.michigan.gov/PPT. Assessors should ensure that Form 5278 is timely filed and fully completed by the taxpayer. Forms that are not fully completed should not be processed by the assessor. It is permissible for the assessor to advise a

taxpayer of an incomplete filing before the May 31, 2016 deadline. The assessor should carefully evaluate the business activities of the taxpayer to ensure that they meet the statutory requirements of the EMPP exemption.

To claim the EMPP exemption, the Affidavit (Form 5278) must be filed with the assessor of the local unit of government where the property is located by May 31, 2016. Properly filed means the form must be filled out in its entirety and must be properly submitted to the assessor of the Township or City where the personal property is located. Use of an electronic or facsimile signature is acceptable by a local tax collecting unit using the same procedure prescribed by the Commission in Bulletin 19 of 2011 for Form 5278. For the 2016 tax year, assessors are further advised that the failure to indicate the appropriate title of the person certifying the Affidavit and Statement on Form 5278 should not result in a denial of the exemption or non-acceptance of Form 5278. Form 5278 must be filled out in its entirety. "In its entirety" means filling out all of Part 1 and any sections of Part 2 and Part 3 that are applicable to claiming the exemption. Any section not applicable may be left blank. Part 2 of the form is filled out and entered in the assessor's software in the same manner as the Personal Property Tax Statement, Form 632. Assessors should review the Form 5278 instructions and the Michigan Department of Treasury's "Form 5278 Filing Checklist" for additional guidance on what must be contained on Form 5278 for taxpayers to claim the exemption.

For the 2016 tax year, because February 20 is a Saturday, Form 5278 must be filed with the local unit assessor no later than the next business day, which is Monday, February 22, 2016. If a taxpayer did not file Form 5278 or filed an incomplete Form 5278 by February 22, 2016 to claim the EMPP exemption, taxpayers can file any approved version of Form 5278 that has been issued by the State Tax Commission or the Michigan Department of Treasury with the assessor of the city or township in which the eligible personal property is located by May 31, 2016. Unlike the Small Business Taxpayer Exemption, **filed means actual receipt by the assessor**. Taxpayers who submitted a Form 5278 after February 22, 2016 must resubmit Form 5278 prior to May 31, 2016.

Neither the assessor nor the board of review has authority to grant the EMPP exemption if Form 5278 is not filed timely. It is suggested that the form should be date-stamped or date-inscribed on the date of actual receipt by the assessor. Late filed Affidavits should not be accepted by the local unit. Affidavits that are not properly filed or are late filed are not considered denied by the assessing officer for purposes of appeal rights.

EMPP that was first placed in service in 2006 through 2012 will still be reported as ad valorem personal property in Part 2 on Form 5278. Property meeting the definitions of *qualified new personal property* and *qualified previously existing personal property* first placed in service after 2012 and prior to 2006 will be exempt from ad valorem taxes and IFT specific taxes and will instead pay the State Essential Services Assessment and will report the personal property in Part 3 of Form 5278.

Taxpayers will report 100% of the Eligible Manufacturing Personal Property's fair market value at the time of the acquisition by the first owner. The assessor must understand that when reporting ESA acquisition cost ("fair market value") the determination which matters is not the year that the personal property was purchased by the first user but rather the year that the personal property was first placed "in service." Until the personal property is placed in service,

it is “construction in progress.” Construction in progress does qualify as EMPP if the property will qualify as EMPP when it is placed in service.

Taxpayers who do not occupy the Occupied Real Property but have personal property present on the site, claim the exemption based on whether the personal property on the site qualifies and must claim the exemption by filing Form 5278. The exception to this is leasing companies do not file for the EMPP exemption. In such instances, the customer (the lessee) reports the property and claims the exemption.

Form 5278 must be filed each and every year that the taxpayer claims the exemption. It is important to note that it is possible for a taxpayer to qualify for one year but not the next year, based on the predominant use of the personal property.

4. **Special Acts:** The most difficult personal property tax changes involve the treatment of IFT (P.A. 198) and P.A. 328 (MCL 211.9f) property. Certain specific exemption certificates remain in effect until the EMPP becomes exempt under MCL 211.9m or MCL 211.9n.

First, the Assessing Officer must understand that an IFT certificate or an Act 328 exemption which was in effect on or after December 31, 2012 is extended for any EMPP that is not exempt. In the case of a non-extended IFT, the assessor must continue to maintain the IFT parcel separately even after the EMPP is exempt, until the IFT certificate expires.

Not all EMPP will be immediately exempt. In the first year, 2016, only property first placed in service before 2006 or after 2012 is exempt. The balance of the personal property at the site is still subject to ad valorem assessment or the IFT specific tax. In the case of property which benefits from exemption programs, some “in service” years may be exempt while other years are not exempt.

The assessor must understand that in the case of EMPP subject to an extended IFT certificate, the taxpayer is responsible for paying both IFT specific tax and ESA specific tax. Assessors should review ESA Topics: IFT (P.A. 198) Property Reporting and Treatment document and Bulletin 8 of 2015 for further information.

5. **Mistakenly Terminated IFT Parcels:** Public Act 408 of 2012 provides that if personal property was Eligible Manufacturing Personal Property (EMPP) and received the benefit of an Industrial Facilities Tax (IFT) exemption pursuant to a certificate which was in effect for the 2013 assessment year (that is, a certificate which expired after December 30, 2012), then the IFT certificate is extended until the personal property benefited by the certificate becomes exempt as qualified new personal property, as defined by MCL 211.9m, or as qualified previously existing personal property, as defined by MCL 211.9n. If the assessor mistakenly failed to extend an IFT certificate, then the assessor must correct the error by filing a petition pursuant to MCL 211.154 requesting the addition of the personal property in question to the special acts roll as IFT exempt personal property, where it was omitted from assessment, and by filing another petition pursuant to MCL 211.154 requesting the removal of the personal property from the ad valorem assessment roll, as incorrectly reported property. If several IFT special act parcels were mistakenly removed, then a separate petition must be filed for each IFT parcel but only one petition is filed to correct the ad valorem assessment roll. Assessors are cautioned:

- To be extended, the IFT certificate must have been in effect for the 2013 assessment year.
- To be extended, the personal property must meet the definition of eligible manufacturing personal property.
- Depending on the facts, it might be necessary to include on the MCL 211.154 petition the 2014, 2015 and 2016 assessment years, the 2014 and 2015 assessment years only, the 2015 and 2016 assessment years only, or the 2015 assessment year only. If the first personal property which was benefited by the IFT certificate was placed in service before 2006 or after 2012 then it is exempt as qualified new personal property or as qualified previously existing personal property for the 2016 assessment year and, therefore, the IFT expired on December 30, 2015.
- Each MCL 211.154 petition filed relating to extended IFT personal property must be accompanied by Form 5278 for each IFT certificate and ad valorem personal property parcel which is being corrected.
- If the taxpayer has not claimed that the personal property benefited by the IFT certificate is EMPP then the assessor was correct in ending the IFT certificate and no MCL 211.154 petition should be filed. This means that to be corrected, Form 5278 must have been filed on or before May 31, 2016. If the taxpayer filed a Form 5278 relating to the ad valorem assessment but did not file a form 5278 for the extended IFT because the assessor mistakenly failed to extend the IFT certificate, then taxpayer should still be deemed to have timely claimed that the personal property was EMPP, but the taxpayer is required to submit amended Form 5278 for all accounts and those submissions must accompany the MCL 211.154 petitions.

6. **Approval/Denial of EMPP Exemption:** Assessors are required to determine if all claims for exemptions are timely filed, complete and valid. Proper records supporting the assessor's approval or denial of the exemptions are required to be maintained. Assessors must deny the EMPP exemption in cases where he or she is convinced that the taxpayer does not qualify. Unlike the Small Business Taxpayer Exemption, where the assessor can retroactively deny for the current and three preceding years, the assessor can only enter a denial of the EMPP exemption for the current year.

Assessors must be aware that utility personal property as defined in MCL 211.34c is not used in industrial processing or direct integrated support. Utility personal property is not eligible to receive the EMPP exemption and is not included in the calculation to determine a taxpayer's eligibility for the exemption.

If the assessor determines the personal property for which an Affidavit was filed to claim the EMPP exemption by May 31, 2016 does not qualify for the EMPP exemption, the assessor should deny the claim for EMPP exemption. Assessors are required to notify the claimant in writing indicating the reason for the denial and advising the claimant that the denial may be appealed to the Michigan Tax Tribunal within 35 days of the date of the denial.

The State Tax Commission has approved a sample form for the assessor's denial of a request for EMPP exemption. Assessors are encouraged to utilize this sample denial form to deny an exemption that is determined to not meet the eligibility requirements of MCL 211.9m and MCL 211.9n. The sample denial form is available on the Personal Property Tax page at www.michigan.gov/PPT and on the State Tax Commission's page under the What's New heading at www.michigan.gov/statetaxcommission.

7. **Assessor Reporting Requirements:** Except in cases where the Form 5278 was not received by February 22, 2016, assessors are required to have all data entered from Form 5278 uploaded to BS&A for submission to the Department of Treasury no later than April 1. Failure to submit the required report of ESA costs with the Department of Treasury by the April 1 deadline will impede the timely assessment of the ESA specific tax. Failure to transmit data by April 1 as required by statute and at the direction of the State Tax Commission, may result in further disciplinary action for nonfeasance of duties.

Assessors that do not have BS&A software and that have taxpayers claiming the EMPP exemption, must mail a hard copy of Form 5278 no later than February 29, 2016 to the ESA Section Manager at P.O. Box 30710, Lansing, Michigan 48909.

Assessors must enter all the information from Form 5278 into the assessing software. This requires that the assessor enter the reported acquisition costs in his or her computer database. The assessor should pay close attention to make sure the federal identification number (FEIN), parcel identification number and revenue sharing code are accurate in the assessing software for each personal property parcel.

The assessor cannot enter an override, since he or she is required to report the ESA acquisition costs to the Michigan Department of Treasury (through BS&A Software) prior to April 1, and must also have the non-exempt costs available to transmit electronically, upon request, for audit purposes.

Assessors that have received and approved additional Form 5278 filings and granted the EMPP exemption during the second 2016 filing deadline by May 31, 2016 are required to transmit the Affidavits filed to the Department of Treasury. Assessors should send a single e-mail to esareporting@michigan.gov and attach a .pdf file of each Form 5278 received after February 22, 2016 by the local unit of government **by June 7, 2016**. The subject line of the email should be in the following format: **Local Unit, County, 2016 EMPP** (i.e. City of Lansing, Ingham County, 2016 EMPP). In the body of the email, the assessor should indicate the number of additional Form 5278 filings and attach a .pdf copy of each filing to the email. The .pdf should include all pages of the Form 5278 in a single .pdf file. The Department will send an e-mail acknowledging receipt of the assessor's e-mail and Form 5278 attachments. If the assessor does not receive such an e-mail acknowledgement, the assessor should contact the Department of Treasury ESA Section at 517-241-0310.

Since many taxpayers who qualify for exemption will be multi-jurisdictional and since Treasury has no way of determining all of the local units where Form 5278 might be filed, Treasury cannot begin processing the ESA assessments until local units have reported.

8. **2016 Assessment Roll:** As a result of the second filing deadline for taxpayers that failed to file Form 5278 or filed an incomplete Form 5278 by February 22, 2016, assessors will need to update their assessment rolls to reflect the EMPP exemptions for the 2016 tax year. In this instance, if the assessor determines that personal property qualifies for the EMPP exemption after the 2016 assessment roll has been completed, the assessor is required to immediately amend the 2016 assessment roll to reflect the EMPP exemption.

MCL 211.34d(2) provides that on or before the first Monday in May of each year, the assessing officer of each township or city must tabulate the tentative taxable value approved by the local board of review and as modified by county equalization. This tabulation by the assessing officer must set forth the additions and losses for each classification of property that is separately equalized for each unit of local government or part of a unit of local government in the township or city. The tabulation is provided to the equalization director on form 609 (L-4025). Further, the county equalization director must compute these amounts and the current and immediately preceding year's taxable values for each classification of property and calculate the millage reduction fraction for each unit of local government in the county for the current year. Pursuant to MCL 211.34d(1)(h)(ii) personal property which was assessed in 2015 and which was determined to be exempt by the 2016 March Board of Review is treated as "losses" for purposes of calculating the 2016 millage reduction fraction. Although Public Act 108 of 2016 permits a taxpayer to claim a 2016 exemption for personal property that is qualified new personal property, as defined by MCL 211.9m, or which is qualified previously existing personal property as defined by MCL 211.9n, based on a filing of Form 5278 by May 31, 2016, and although property which qualifies for exemption based on the filing of Form 5278 by May 31, 2016 is "losses," as defined in MCL 211.34d(h)(ii), such personal property is "losses" for purposes of calculating the 2017 millage reduction fraction, not for purposes of calculating the 2016 millage reduction fraction. Assessors and equalization directors are cautioned that assessment software may, or may not, correctly recognize the personal property exempted by the extended period for filing Form 5278 as "losses" and it may be necessary for the assessor and/or the county equalization director to individually correct the tabulation required by MCL 211.34d(2) to properly recognize the personal property exempted by a claim made during the extended filing period for form 5278 as "losses" when calculating the 2017 millage reduction fraction.

9. **Resources:** Due to the complicated nature of the EMPP Exemption and the associated ESA specific tax, assessors are not doing their taxpayers a service by attempting to provide guidance relating either to EMPP or the ESA and may be subject to legal liability for giving incorrect information. Instead, the State Tax Commission recommends that the assessors direct taxpayers to submit questions at the Treasury webpage:

www.michigan.gov/taxes

Then, "Property Tax" on the left margin

Then, "Essential Services Assessment" under the Personal Property Tax heading

Then, "Submit a Question" at the bottom under the Contact Us heading

More information is also available at www.michigan.gov/PPT. Specific questions and information regarding the Essential Services Assessment (ESA) can be found at www.michigan.gov/ESA.

10. **ESA Communications:** Communicating effectively is a high priority of the State Tax Commission and Department of Treasury. The Department of Treasury will use GovDelivery to disseminate information on the ESA in a timely and effective manner. The State Tax Commission requests that all assessors subscribe to the ESA GovDelivery listserv in order to receive important notices and guidance on the ESA. Information on how to subscribe is available on the Department of Treasury ESA website at www.michigan.gov/ESA (not a live link). Subscribers are responsible for updating their email if there are changes; Department of Treasury staff cannot make any changes to email addresses.

11. **Impacts on Other Forms:** Assessors must make sure that the following forms reflect the additional 2016 EMPP exemptions claimed by May 31, 2016.

Form 3369: *Renaissance Zone Taxable Value.* Do not include on the 2016 form the 2016 taxable value of EMPP exempt in 2016 under MCL 211.9m or MCL 211.9n.

Form 5403: If a Form 5278 is filed for a parcel that you have previously submitted a Form 5403, *Personal Property 2016 Taxable Value for Expired Exemptions*, please submit a revised Form 5403.

Form 5429: Include on Form 5429, *Personal Property 2016 Taxable Value for Expired/Expiring Renaissance Zones*, parcels for which a Form 5278 was filed in May 2016.

12. **Contacts:** Treasury staff is available to assist and answer questions. The following are key contacts:

ESA Program E-mail Address: ESAQuestions@michigan.gov

ESA Unit Phone Number: (517) 241-0310